



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/834,061	04/11/97	LEVEILLE	M 1504/47129

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IM12/0417

EXAMINER

TUCKER, P

ART UNIT

PAPER NUMBER

1721

DATE MAILED: 04/17/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

834061

Applicant(s)

LEVEILLE

Examiner

P. TUCKER

Group Art Unit

1721

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1 - 36 is/are pending in the application.
Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1 - 16, 19 and 21 - 36 is/are rejected.
- ☒ Claim(s) 17, 18, 20 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2 ☐ Interview Summary, PTO-413
- ☒ Notice of References Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other _____

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 32 teaches mid, low and high humidity without teaching the level of humidity which is considered mid, low or high.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-16, 19, 21, 22 and 24-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Orignac et al., Applied Physics Lett., vol. 69, no. 7, pages 895-897.

Orignac teaches a waveguide which comprises an Nd or Er doped sol-gel medium, wherein Erbium nitrate is used as the Er salt. Such waveguide has light input means and means for measuring the spectral output of light. Applicants intended use as a calibration medium does not distinguish.

5. Claims 1-4, 6, 7, 9-16, 19, 21-26 and 28-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Xu et al., Journal of Non-Crystalline Solids, vol. 194, pages 235-240, (1996).

Xu teaches an optical device comprising a laser, spectrophotometer and photomultiplier which utilizes a doped sol-gel medium comprising Erbium nitrate. Such device has light input means and means for measuring the spectral output of light. Applicants intended use as a calibration medium does not distinguish.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 10, 12, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Orignac and Xu.

Orignac and Xu are described in the previous paragraphs. Orignac and Xu differ from the present invention in that the doping by impregnating is not disclosed. It is well known in the art of sol-gel chemistry to add dopes to the gel by direct mixed doping or impregnation. It would be thus obvious to one of ordinary skill in the art to utilize impregnation instead of mixed doping in the inventions of Orignac and Xu.

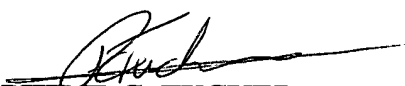
8. Claims 17, 18 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. It is noted that applicant has used sol-gel and gel-sol interchangeably throughout the claims. It would be preferable if applicant would use the common term sol-gel for all of these instances in order to avoid confusion.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Tucker whose telephone number is (703) 308-0529. The examiner's normal working hours are 7:30am-4:00pm, Monday-Friday. If necessary SPE Sharon Gibson may be contacted at 703-308-4552. For inquiries of a general nature call the receptionist at 703-308-0651. The group FAX no. is 703-305-5408.

PCT-1604
April 10, 1998


PHILIP C. TUCKER
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